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6 IN THE UNITED STATES DISTRICT COURT
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 VISA USA, INC.,

10 Plaintiff,

No. C 07-05585 JSW

11 v.

12 MARITZ INC,

13 Defendant.
14 _____/

**NOTICE OF TENTATIVE
RULING AND QUESTIONS**

15 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
16 NOTICE OF THE FOLLOWING **TENTATIVE** RULING AND QUESTIONS FOR THE
17 HEARING SCHEDULED ON FEBRUARY 22, 2008 AT 1:30 P.M.:

18 The Court has reviewed the parties' papers and, thus, does not wish to hear the parties
19 reargue matters addressed in those pleadings. If the parties intend to rely on authorities not
20 cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these
21 authorities reasonably in advance of the hearing and to make copies available at the hearing. If
22 the parties submit such additional authorities, they are ORDERED to submit the citations to the
23 authorities only, with reference to pin cites and without argument or additional briefing. *Cf.*
24 N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral argument to
25 explain their reliance on such authority.

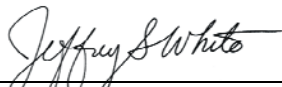
26 The Court **tentatively DENIES** Defendant's motion to stay arbitration pending
27 determination of arbitrability; **tentatively GRANTS** Plaintiff's motion to stay action and
28 compel arbitration; and **tentatively DENIES** Plaintiff's motion for discovery.

1 The parties shall each have 20 minutes to address the following questions:

- 2 1. What is the current status of the arbitration proceedings?
- 3 2. If Visa failed to mention anything at all with regard to its potential damages, how is that
4 a “partial, misleading and ambiguous” statement or conduct relating to their disclosures
5 prior to the July 9 Agreement? (*See* Plaintiff’s motion for discovery at 7.) Are
6 Plaintiff’s in-house attorney’s subjective, unexpressed, and mistaken impressions
7 probative as to whether Visa made any misrepresentation?
- 8 3. Maritz repeatedly contends that Visa told them nothing at all about its own claim for
9 damages prior to the signing of the Agreement. Under what theory did such a duty
10 arise? How can a claim for fraudulent inducement lie where there was no specific
11 disclosure (except a reservation of rights as to damages) as opposed to partial
12 disclosure? Does the parties’ agreement to act in good faith implicate a duty to disclose
13 a specific damages amount as opposed to a general reservation of rights?
- 14 4. Are Maritz’s initial challenges to the whole Agreement, and not only to the arbitration
15 provision, binding as representations that Maritz intended to challenge the whole
16 Agreement? Do the subsequent letters indicating a challenge only to the arbitration
17 provision change the analysis?
- 18 5. Do the parties have anything further they wish to address?

19 **IT IS SO ORDERED.**

20 Dated: February 21, 2008

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23 JEFFREY S. WHITE
24 UNITED STATES DISTRICT JUDGE
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